1950.

File No. Cr. A. DWR 5

Legal DEPARTMENT

A BRANCH

Subject:— Criminal Appeals in the High Court of Bombay against the orders of acquittal for Dharwar District.

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Cr. A. DWR/50

File No.

Bd. Secrt. Slip 50-3

Opinion in the case of State Vs.

P.V.Navalgund.

In this case the accused was a Head Clerk to D.F.O.Dharwar, Bijapur Division. The case against him was that on the 29th of May 1945 he received a sum of Rs.4,178/- with challans from Shri Badaskar with a promise to the latter that he would credit the amount into the Treasury. But subsequently, he did not credit the amount into the Treasury butmisappropriated the amount and thus committed the offence of criminal breach of trust punishable under Section 406.

2. The prosecution case in brief was that this amount was intended to be credited in the Treasury towards payment as part of the auction moneys in respect of the forest sales of Mavinkop coupes. As Shri Badaskar was not able to pay the amount into the Treasury himself he requested him to release the forest materials.

3. The Learned Sub-Divisional Magistrate, Dharwar, City, by his order and judgment, dated the 6th March 1950, was pleased to hold that the payment of Rs.4,178/- by Shri Badaskar to the accused was not proved. He gave the accused the benefit of the doubt. He held that no misappropriation was committed and acquitted the accused.

4. The oral evidence led in the case by the prosecution consisted of Shri Badaskar, Shri Pathan, Shri Rege, Shri Haveri and Shri Dhumnal. The payment of the sum of Shri Badaskar into the hands of the accused was witnessed by four persons.

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5. Apart from this oral evidence there was documentary evidence consisting of the account books maintained by Shri Badaskar and Belamkar. There was also circumstantial evidence in the case which showed that the accused was in straightened financial circumstances.

6. The Learned Magistrate makes very strong comments on the fact that the prosecution have not examined Shri Pande, who was perhaps an important witness in the case. It does not seem that the prosecution have been able to explain why they did not examine Shri Pande.

7. The Learned Magistrate thinks that the evidence of Shri Pathan is not believable to the fullest degree. He seems to give much weight to the fact that Shri Pathan did not inquire of the credit of the amount.

8. The Learned Magistrate also seems to think that perhaps Shri Badaskar may not have such a large amount with him on that day. He is not satisfied ~~w~~ that he could have borrowed a sum of Rs.1,250/- from his father.

9. In addition to this, the Learned Magistrate has also disbelieved the evidence of Sindhe on the grounds that his presence is not mentioned by some of the witnesses. About the accounts also that are produced in the case, the Learned Magistrate thinks that they are suspicious and he is not satisfied about the genuineness of the accounts. He gives some grounds why he

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he cannot accept these grounds.

10. It is true that there was a release order and ordinarily the release order would not have been passed unless the payment was made. It also seems that no inquiry was made about the payment till after a long time. The Learned Magistrate has disbelieved the oral evidence of the witnesses on the grounds of discrepancies in their evidence.

11. It seems to me that in this case the prosecution have got a good number of witnesses to prove their case. It is also true that the story of the prosecution is supported by the accounts and if the evidence and the accounts are relied upon then there is no doubt that the circumstantial evidence also in this case strongly points to the conclusion that the accused must be guilty. But the case must depend eventually on the appreciation of the oral evidence and on the appreciation of the entries in the case. The High Court ordinarily does not interefere with the appreciation of evidence of the Lower Court. In view of this, I do not think that I can say that an appeal against acquittal, if filed will necessarily succeed in the High Court. Particularly in appeals against acquittal, the High Court is strict and is unwilling to reappreciate the evidence. I cannot therefore advise the filing of an appeal in this case with any chance of success. I do not advise the filing of an appeal.

(Not in all cases)

G. G. Thakor

Bombay,
1st June 1950.

Additional Assistant Government Pleader.

6. The learned Sessions Judge gives his reasons for not accepting the evidence against accused No.1 in paragraph 13 of his judgment and in the end he observes "in this state of the record I do not think that it would be safe to accept one part of the prosecution evidence and to reject the other which supports the defence and to base the conviction of appellant No.1 on the evidence of this character. There does appear therefore on the record a reasonable doubt about the guilt of appellant No.1 and he would therefore be entitled to the benefit of that doubt."

7. As regards appellant No.2 the learned Judge pointed out that the Trial Court failed to consider his case separately. All that the appellant No.2 was alleged to have done was that, after his master told him to take Yallappa to the godown for the purpose of selecting iron bars which he wanted, he brought the iron bars to the shop of accused No.2 and weighed the bars at the instance of accused No.1. There was absolutely no evidence that either before the day or on the day of the offence appellant No.2 had anything to do with fixing the rate which appellant No.1 demanded from Yellappa. That being so the learned Sessions Judge also acquitted accused No.2.

8- In this state of facts I agree with the view taken by the Public Prosecutor that this is not a case in which an appeal should be filed and that the High Court is not likely to interfere with the order of acquittal as the evidence on the record

Opinion in the case of the State Vs.

Chanabasappa Baslingappa Honagudi No.1 and another.

In this case two accused were charged in the Court of the Special Magistrate, First Class, Hubli, under Section 7 of the Essential Supplies Act 1946.

2. The prosecution alleged that the accused No. 1 was a dealer in iron and hardware in Gadag and accused No. 2 was his clerk. It is alleged that the accused sold iron bars at a rate higher than the one which was fixed by the Government and that thereby they committed an offence as stated above.

3. The Trial Court after reviewing the evidence came to the conclusion that the offence was proved and he held that both the accused were guilty and sentenced accused No. 1 to suffer six months rigorous imprisonment and to pay a fine of Rs.1000/- only or in default to suffer two months rigorous imprisonment and sentenced accused No. 2 to suffer three months rigorous imprisonment and to pay a fine of Rs.100/- only or in default to suffer one month's rigorous imprisonment.

4. The accused appealed against the conviction and sentence to the Court of the Sessions Judge at Dharwar being Criminal Appeal No.36 of 1950.

5. The learned Sessions Judge carefully went through the whole evidence and found that it was not possible to accept the prosecution evidence which was tainted and not worthy of acceptance.

after full discussion was found not worthy of acceptance.

9. I do not advise an appeal against the order of acquittal in this matter.

Bombay,
15th July 1950.

Government Pleader, High Court.

HMC/adt

The question raised for the R.L.A's consideration is whether the magazine entitled "Kaliyuga" which contains six nude pictures of women is obscene.

2. Nude pictures which exhibit a work of art will not fall under section 292. A picture of a woman in the nude is not per se obscene. For the purpose of deciding whether the picture is obscene or not, one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the person in whose hands it is likely to fall, etc. But pictures of a bawdy character, if filthy and disgusting, will be considered obscene (see Ratanlal's Law of Crimes, p. 647). The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. If the work is one which would certainly suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of most impure and libidinous character, its publication is an offence, though the accused has in view an ulterior object which is innocent or even laudable. Anything calculated to inflame the passions is obscene. Anything distinctly calculated to incite a reader to indulge in acts of indecency or immorality is obscene, e.g., a book containing a description of defective sexual enjoyment with advice for heightening and prolonging such enjoyment in the case of normal persons (see ibid p.646). The nude pictures included in this magazine do not exhibit any work of art; nor do they intend to illustrate any scientific treatment of the subject. The first picture on the front page of the magazine is clearly of libidinous character when

judged from its posture, pose and suggestive elements contained in it. No explanation is offered as to why this nude picture is printed on the front page of the magazine. Obviously this is intended to attract the young boys. The subjects dealt with in this magazine are all intended to inflame passions. The article dealing with the origin of kissing, containing illustrative pictures, the article dealing with male and female, and also the article dealing with prostitution (which contains two nude pictures) deal with love matters. The article under the heading "Female and Nudity" contains two nude pictures. These pictures are strikingly of libidinous character as could be gathered from their pose, posture and suggestive elements. No reason is assigned by the author to publish these nude pictures in connection with this article. The article relating to the marriage of a passionate woman also contains a nude picture which exhibits the charms of a woman. Lastly, the article under the heading "Entanglement in Youth" and the Questions and Answers at the end have a tendency to excite passions. Read as a whole, the magazine and the nude pictures contained therein are obscene in asmuch as the publication has a tendency to deprave and corrupt the young people in whose hands it is likely to fall and the thoughts expressed in this magazine are of an impure and libidinous character. Consequently, the magazine would come within the provisions of section 292 of the Indian Penal Code.

Remembrancer of Legal Affairs.

U.R. to H.D. (P611) No. 289- Confl., dated 10th May 1948

LDK 6/11.

As observed by Mohamed Akram J. in Shri Ram Saxena V. Emperor A.I.R. 1940 Cal.p.290, "For the purpose of deciding whether a pinture is obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the person intc whose hands it is likely to fall, etc. No hard and fast rule can therefore be laid down for the determination of the matter." It appears that the Magistrate has completely lost sight of this test and has proceeded on a wrong basis that for the treatment of the sex philosophy and sex psychology the nude pictures are quite essential for the purpose of illustrating th science. This kind of consideration is obviously irrelevant. He has not tried to consider whether the nude pictures in the present case contain the offensive elements as stated by Mohamed Akram J. This test was fully considered by the R.L.A. in his last opinion No. 289 confl. dated 10-5-1949 and h he held that the nude pictures are of a libidinous character intended to inflame passions.

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Remembrancer of Legal Affairs.

U.R. to H. D. No. 14186, dated the 9th October 1950.

Criminal Appeals.
In the High Court, Bombay
against acquittal (Dharwar).

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 15267
Bombay Castle, 20 Nov 1950.

RESOLUTION : The Government Pleader, High Court, Bombay,

In the Court of the Resident Magistrate, First Class, Dharwar	:	is directed
Criminal Case No. 756 of 1949	:	to file an
State	:	appeal in the
Vs.	:	High Court,
Accused: 1. Gopalakrishna Venkatesh Maliye	:	Bombay, under
2. Shripatrao Narayanarao Deshpande	:	section
3. Sheshagirirao Govindarao Kulkarni	:	417 of the
Offence:- Section 292 Indian Penal Code.	:	Code of

Criminal Procedure, 1898, against the order of acquittal passed by the Resident Magistrate, First Class, Dharwar on 17-6-1950 in respect of the accused in the case referred to in the margin.

By order of the Governor of Bombay,

Original 20.1.11

T.P. Ghogale,
Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Dharwar,
The Government Pleader, High Court, Bombay with certified copy of the record.
The Range Deputy Inspector-General of Police, Southern Range.

Issued 20/2/11

Subd for sign
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R: L.A. may see
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HSP
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G. C. P. (J) J 50-4000-5-50
G. O., L. D., No. 1193 dated 7-[illegible]-15
G. P. C., BOMBAY.

[Govt. Pl. H. C. Bom.—Spl. Form No. 2]

8 DEC 1950

No. 12279

21/18/133

From

THE GOVERNMENT PLEADER, HIGH COURT,

BOMBAY;

To The Secy. to Govt. Legal Deptt.Bombay.

~~THE DISTRICT MAGISTRATE OF DHARWAR.~~

~~THE COLLECTOR OF~~

Bombay,...5.12.1950.....195

SIR,

Referring to.....G.R.L.D.....No.....15267.....,

dated.....2.11.50.....195 , I have the honour to inform you that the Case noted in the margin was heard by the High Court on 21.11.50. when the following Order was passed:—

Criminal Appeal No. 782/1950
(By Govt.).

STATE

V/S

Gopalkrishna V.Maliye and ors.

P. T. O.

Your most obedient servant,

Government Pleader, High Court.

[illegible] TO GOVERNMENT
[illegible] DEPARTMENT
Sub No. 24152.
Branch 7-12-50

" Dismissed."

2. Their Lordships the Hon'ble Justices Bavdekar and Dixit have summarily dismissed the above appeal as their Lordships on a perusal of the obscene pictures felt that it was not a case for their interference. They also thought that with reference to the Articles the Lower Court had applied correct test. In this view the matter was summarily dismissed..

3. No judgment has been recorded by the High Court in this matter.

Yours faithfully,

B.G. Shaker

Government Pleader, High Court.

Submitted
The result may be recorded by a GR
HW
11/12

DS No appeals filed with the subsidiary H.O.
C.G. 13.12

RL H 13/12/12

Secy H.D
H.M.C.H.) pm

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Criminal Appeals.

In the High Court, Bombay
against acquittal (Dharwar).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7614
Bombay Castle, 14th May 1951.

Read Government Resolution, Legal Department, No. 15267, dated the 2nd November 1950.-

Letter from the Government Pleader, High Court, Bombay, No. 12279, dated the 5th December 1950.- Stating that Criminal Appeal No. 782 of 1950 filed by Government against the acquittal of the Accused in the case noted in the margin, was dismissed by the High Court, Bombay, on 21st November 1950.

In the Court of the Resident Magistrate, First Class, Dharwar. Criminal Case No. 756 of 1949.	
State vs.	
Accused: 1. Gopalkrishna Venkatesh Maliye 2. Shripatrao Narayanarao Deshpande 3. Sheshagirirao Govindarao Kulkarni	
Offence:- Section 292 of Indian Penal Code.	

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

R. T. Katarki,
Deputy Secretary to Government.

Original

To

The Home Department,

The District Magistrate, Dharwar,

The Deputy Inspector General of Police, Southern Range.

BM.
8.5.

Submitted for signature
10/5
SSh (Mi)
D.S.
14/5

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Submitted after issue

File in Cr. A. Dhanwar/50

16/5/57

Cr. A. Dhanwar 51.

16/5/57